

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

BLUE SPIKE, LLC,	§	
	§	
Plaintiff,	§	Civil Action No. 6:12-CV-499
	§	
vs.	§	
	§	(LEAD CASE)
TEXAS INSTRUMENTS, INC. et al.,	§	
Defendants.	§	JURY TRIAL DEMANDED
	§	
	§	

**DEFENDANTS' OPPOSED MOTION TO EXCEED PAGE LIMITS FOR THEIR
RESPONSIVE CLAIM CONSTRUCTION BRIEF**

In accordance with Eastern District of Texas Local Rule CV-7(a)(1), Defendants in the above-captioned case respectfully move the Court for leave to exceed the page limit under P.R. 4-5 for Defendants' Responsive Claim Construction Brief ("Responsive Brief"), due on September 9, 2014. For the reasons discussed below, Defendants request no more than 15 additional pages.

In accordance with the Court's Scheduling and Discovery Orders, Defendants must file responsive claim construction briefs. *See* Dkt. Nos. 1331, 1332. Patent Rule 4-5(e) limits the Responsive Brief to 30 pages, through the incorporation of Local Rule CV-7(a)(1).

As instructed by the Court, Defendants conducted many conference calls and together identified for construction thirty terms of the four asserted patents and thirty two asserted claims. As Plaintiff's Counsel is well aware, Defendants are a large group of over 35 defendants that operate in distinct technological fields, which include technology for processing of audio, video, text, and biometric information. Some claim terms are uniquely important to the different technological areas. Defendants tried hard to accommodate the needs of various defendant groups while keeping the number of claim terms to a reasonable number. This cooperation

further had the objective of ensuring that the Court would not be burdened with a number of motions requesting leave to separately brief additional claim terms by allowing the inclusion of all of the terms and supporting arguments -- that subsets of the Defendants wish to incorporate -- into a single omnibus response. Accordingly, Defendants request that they be allowed to exceed the standard local rule page limit of 30 pages, by an additional 15 pages. Defendants believe this request is reasonable in light of the specific circumstances of this case.

Over a month before the due date of Defendants' Responsive Brief and over two weeks before the due date of Plaintiff's Opening Brief, Jordan Sigale of Loeb & Loeb LLP, counsel for defendant Viggle Inc., emailed Plaintiff's counsel on behalf of the Defendants seeking to drop six claim terms from construction and seeking these 15 additional pages, while offering Plaintiff's counsel additional pages for their opening and reply briefs. Nearly two weeks later, on August 19, 2014, Plaintiff's counsel replied agreeing to drop five of the six terms, but refused to agree to any extension of the page limit because of Blue Spike's belief that 45 pages of briefing would "obfuscate the true issues" and would be contrary to the Local Patent Rules. On August 21, 2014, Christopher Swickhamer of Loeb & Loeb LLP, counsel for defendant Viggle Inc., met and conferred via telephone on behalf of the Defendants with Plaintiff's counsel, who refused to agree to any extension. Therefore this Motion is opposed. Contrary to Blue Spike's positions, up to 45 pages of briefing is not for the purpose of obfuscating the true issues but rather ensures that counsel for all of the Defendants jointly can adequately and effectively advance the main arguments as well as the significant arguments that are uniquely important to various distinct defendant groups.

Thus, Defendants respectfully request the Court allow the Defendants to exceed the 30-page limit in their Responsive Brief due September 9, 2014 by 15 additional pages.

Dated: August 25, 2014

Respectfully submitted,

By: /s/ Eric H. Findlay
Eric H. Findlay (Texas Bar No. 00789886)
Walter W. Lackey, Jr. (Texas Bar No. 24050901)
FINDLAY CRAFT, P.C.
102 N. College Ave., Suite 900
Tyler, TX 75702
Telephone: (903) 534-1100
Facsimile: (903) 534-1137
efindlay@findlaycraft.com
wlackey@findlaycraft.com

Jordan A. Sigale
Christopher Swickhamer
LOEB & LOEB LLP
321 North Clark Street, Suite 2300
Chicago, IL 60654
Telephone: 312-464-3109
Facsimile: 312-276-8375
Email: jsigale@loeb.com
Email: cswickhamer@loeb.com

Attorneys for Defendant Viggle Inc.

/s/ Eric H. Findlay
Eric H. Findlay (Texas Bar No. 00789886)
Walter W. Lackey, Jr. (Texas Bar No. 24050901)
FINDLAY CRAFT, P.C.
102 N. College Ave., Suite 900
Tyler, TX 75702
Telephone: (903) 534-1100
Facsimile: (903) 534-1137
efindlay@findlaycraft.com
wlackey@findlaycraft.com

Gabriel M. Ramsey (admitted E.D. Texas)
I. Neel Chatterjee (admitted E.D. Texas)
ORRICK, HERRINGTON & SUTCLIFFE,
LLP
1000 Marsh Road
Menlo Park, CA 94025

Telephone: (650) 614-7400
Facsimile: (650) 614-7401
gramsey@orrick.com
nchatterjee@orrick.com

Alyssa M. Caridis (admitted E.D. Texas)
ORRICK, HERRINGTON & SUTCLIFFE,
LLP
777 S. Figueroa St.
Suite 3200
Los Angeles, CA 90017
Telephone: (213) 629-2020
Facsimile: (213) 612-2499
acaridis@orrick.com

Christopher J. Higgins (*pro hac vice*)
ORRICK, HERRINGTON & SUTCLIFFE,
LLP
1152 15th Street, N.W.
Washington, DC 20005-1706
Telephone: (202) 339-8400
Facsimile: (202) 339-8500
chiggins@orrick.com

*Counsel for Defendants Audible Magic, Corp.,
Facebook, Inc., Myspace LLC, Specific Media
LLC, Photobucket.com, Inc., DailyMotion,
Inc., DailyMotion S.A., SoundCloud, Inc.,
SoundCloud Ltd., Myxer, Inc., Qlipso, Inc.,
Qlipso Media Networks, Ltd., Yap.tv, Inc.,
GoMiso, Inc., iMesh, Inc., Metacafe, Inc.,
Boodabee Technologies, Inc., Zedge Holdings,
Inc., Brightcove Inc., Coincident.TV, Inc.,
Accedo Broadband North America, Inc.,
Accedo Broadband AB, MediaFire, LLC,
WiOffer LLC, and Harmonix Music Systems,
Inc.*

/s/ Anne Champion

Josh A. Krevitt
(NY Bar No. 2568228)
Benjamin Hershkowitz
(NY Bar No. 2600559)
R. Scott Roe
(NY Bar No. 4480224)
Anne Champion

(NY Bar No. 4425237)
Gibson, Dunn & Crutcher LLP
200 Park Avenue
New York, NY 10166
Ph. 212.351.4000
Fax: 212.351.6210
jkrevitt@gibsondunn.com
bhershkowitz@gibsondunn.com
achampion@gibsondunn.com
sroe@gibsondunn.com

Michael E. Jones
SBN: 10929400
mikejones@potterminton.com
Allen F. Gardner
SBN: 24043679
allengardner@potterminton.com
Daniel A. Noteware, Jr.
SBN: 24051123
dannynoteware@potterminton.com
Potter Minton, PC
110 North College, Suite 500
Tyler, Texas 75702
Tel: 903-597-8311
Fax: 903-593-0846

Counsel for Defendant
Shazam Entertainment Limited

/s/ Daniel Johnson, Jr.
C. Erik Hawes (TX Bar No. 24042543)
Email: ehawes@morganlewis.com
Thomas R. Davis (TX Bar No. 24055384)
Email: tdavis@morganlewis.com
MORGAN, LEWIS & BOCKIUS LLP
1000 Louisiana Street, Suite 4000
Houston, Texas 77002
(713) 890-5000 Telephone
(713) 890-5001 Facsimile

Daniel Johnson, Jr. (Admitted *Pro Hac Vice*)
Email: djjohnson@morganlewis.com
MORGAN, LEWIS & BOCKIUS LLP
One Market, Spear Street Tower
San Francisco, CA 94105

(415) 442-1000 Telephone
(415) 442-1001 Facsimile

*Attorneys for Defendants MorphoTrust USA,
Inc.,
L-1 Identity Solutions, Inc., MorphoTrak, Inc.,
and
Safran USA, Inc.*

/s/ Andrew P. Valentine
Andrew P. Valentine (*Pro Hac Vice*)
DLA PIPER LLP (US)
2000 University Ave.
East Palo Alto, CA 94303
Telephone: 650.833.2000
Facsimile: 650.833.2001
andrew.valentine@dlapiper.com

/s/ John Guaragna
401 Congress Avenue
Suite 2500
Austin, TX 78701-3799
Telephone: 512.457.7125
Facsimile: 512.721.2325
john.guaragna@dlapiper.com

*Counsel for Defendants
Irdeto USA, Inc. and Irdeto B.V.*

/s/ Edward R. Reines
Edward R. Reines
Cal. Bar No. 135960 – Admitted to E.D. Texas
Lead Attorney
edward.reines@weil.com
Byron Beebe
Byron.beebe@weil.com
Cal. Bar No. 235179 – Admitted to E.D. Texas
Andrew L. Perito
Cal. Bar No. 269995 – Admitted to E.D. Texas
WEIL, GOTSHAL & MANGES LLP
201 Redwood Shores Parkway
Redwood Shores, CA 94065
Telephone: (650) 802-3000
Facsimile: (650) 802-3100

Counsel for Defendants Last.fm Ltd. and CBS Interactive, Inc.

/s/ Kristin L. Cleveland

Kristin L. Cleveland (OR State Bar No. 001318 – Admitted to E.D. Texas)
kristin.cleveland@klarquist.com
Kristen L. Reichenbach (OR State Bar No. 115858)
Kristen.reichenbach@klarquist.com
John D. Vandenberg (OR State Bar No. 893755)
john.vandenberg@klarquist.com
121 SW Salmon Street, Suite 1600
Portland, OR 97204
Telephone: (503) 595-5300
Facsimile: (503) 595-5301

Eric H. Findlay (Texas Bar No. 00789886)
Walter W. Lackey, Jr. (Texas Bar No. 24050901)
FINDLAY CRAFT, P.C.
102 N. College Ave., Suite 900
Tyler, TX 75702
Telephone: (903) 534-1100
Facsimile: (903) 534-1137
efindlay@findlaycraft.com
wlackey@findlaycraft.com

Attorneys for Defendant Contributor Corporation

/s/ Eric H. Findlay

Eric H. Findlay (Texas Bar No. 00789886)
Walter W. Lackey, Jr. (Texas Bar No. 24050901)
FINDLAY CRAFT, P.C.
102 N. College Ave., Suite 900
Tyler, TX 75702
Telephone: (903) 534-1100
Facsimile: (903) 534-1137
efindlay@findlaycraft.com
wlackey@findlaycraft.com

*Attorneys for Defendants Iritech, Inc.,
NEUROtechnology, Fulcrum Biometrics, LLC,
Futronic Technology Co., Ltd., iPharro Media
GmbH, and iPharro Media, Inc*

/s/ Teresa M. Corbin

Teresa M. Corbin
Teresa M. Corbin, CA Bar No. 132360
(Admitted E.D. Texas)
Bryan A. Kohm, CA Bar No. 233276
(Admitted E.D. Texas)
David M. Lacy Kusters, CA Bar No. 241335
(Admitted E.D. Texas)
Fenwick & West LLP
555 California Street, 12th Floor
San Francisco, California 94104
Telephone: (415) 874-2300
Facsimile: (415) 281-1350

Darren E. Donnelly, CA Bar No. 194335
(Admitted E.D. Texas)
Fenwick & West LLP
Silicon Valley Center
801 California Street
Mountain View, California 94041
Telephone: (650) 955-8500
Facsimile: (650) 983-5200

*Attorneys for Defendants
Infinisource, Inc.; Qquest Software Systems,
Inc.; SMRTV, Inc.; and The Nielsen Company
(US) LLC*

/s/ Steven J. Corr

Tharan Greg Lanier (admitted E.D. Texas)
California Bar No. 138784
Jones Day
1755 Embarcadero Road
Palo Alto, CA 94303
Telephone: (650) 739-3939
Facsimile: (650) 739-3900
tglanier@jonesday.com

Steven J. Corr (admitted E.D. Texas)
California Bar No. 216243
Jones Day

555 S. Flower Street
Los Angeles, CA 90278
Telephone: (213) 243-2327
Facsimile: (213) 243-2539
sjcorr@jonesday.com

*Attorneys for Defendants The Nielsen
Company (US) LLC*

/s/ Ryan K. Yagura

Ryan K. Yagura - TX S.B. #240755933
ryagura@omm.com - CA S.B. #197619
Nicholas J. Whilt (*pro hac vice*)
nwhilt@omm.com – CA S.B. #247738
O'Melveny & Myers LLP
400 South Hope Street
Los Angeles, California 90071-2899
Telephone: (213) 430-6000
Facsimile: (213) 430-6407
Sarah A. Pfeiffer (*pro hac vice*)
spfeiffer@omm.com – CA S.B. #278205
O'Melveny & Myers LLP
610 Newport Center Drive
Newport Beach, California 92660
Telephone: (949) 823-6900
Facsimile: (949) 823-6994

*Attorneys for Clear Channel Broadcasting,
Inc.*

/s/ Jo Dale Carothers

Alan H. Blankenheimer
abankenheimer@cov.com
Jo Dale Carothers
jcarothers@cov.com
COVINGTON & BURLING LLP
9191 Towne Centre Drive, 6th Floor
San Diego, CA 92122-1225
Tel: 858-678-1800
Fax: 858-678-1600

Michael E. Jones
SBN: 10929400
Potter Minton, PC
110 N. College, Suite 500

Tyler, Texas 75702
Tel: 903-597-8311
Fax: 903-593-0846
mikejones@potterminton.com

*Attorneys for Defendant
Entropic Communications, Inc.*

/s/ Dwayne K. Goetzel
Eric B. Meyertons
Texas State Bar No. 14004400
Dwayne K. Goetzel
Texas State Bar No. 08059500
Ryan T. Beard
Texas State Bar No. 24012264
MEYERTONS, HOOD, KIVLIN,
KOWERT & GOETZEL, P.C.
1120 S. Capital of Texas Hwy.
Building 2, Suite 300
Austin, Texas 78746
(512) 853-8800 (telephone)
(512) 853-8801 (facsimile)

*Attorneys For Defendant
Cognitec Systems Gmbh And
Cognitec Systems Corp.*

/s/ Michael A. Molano
Michael A. Molano (*pro hac vice*)
Ward Johnson (*pro hac vice*)
MAYER BROWN LLP
3000 El Camino Real
Palo Alto, CA 94306-2112
Phone: (650) 331-2000
Fax: (650) 331-2060
Email: wjohnson@mayerbrown.com
Email: mmolano@mayerbrown.com

Kyle E. Friesen
Texas Bar No. 24061954
MAYER BROWN LLP
700 Louisiana Street, Suite 3400
Houston, Texas 77002-2730
Phone: (713) 238-2691

Fax: (713) 238-4691
Email: kfriesen@mayerbrown.com

*Counsel for Defendants
Civolution USA, Inc. and Civolution B.V.*

/s/ Reid E. Dammann

Reid E. Dammann (CA Bar No. 249031)
r.dammann@mpglaw.com
MUSICK PEELER LLP
One Wilshire Boulevard, Suite 2000
Los Angeles, CA 90017
Houston, TX 77010-1018
Telephone: (213) 629-7611
Facsimile: (213) 624-1376

*Counsel for Defendant Airborne Biometrics
Group, Inc.*

/s/ Orion Armon

Heidi L. Keefe (*pro hac vice*)
Mark R. Weinstein (*pro hac vice*)
COOLEY LLP
Five Palo Alto Square
3000 El Camino Real
Palo Alto, CA 94306-2155
Phone: (650) 843-5000
Fax: (650) 857-0663
hkeefe@cooley.com
mweinstein@cooley.com

Orion Armon (*pro hac vice*)
Sara J. Bradford (*pro hac vice*)
Janna K. Fischer (*pro hac vice*)
COOLEY LLP
380 Interlocken Crescent, Suite 900
Broomfield, CO 80021
Tel: (720) 566-4000
Fax: (720) 566-4099
oarmon@cooley.com
sbradford@cooley.com
jfischer@cooley.com

Deron R. Dacus (Texas Bar No. 00790553)

The Dacus Firm, P.C.
821 ESE Loop 323, Suite 430
Tyler, TX 75701
Tel: (903) 705-1117
Fax: (903) 705-1117
ddacus@dacusfirm.com

Counsel for Defendant Facebook, Inc.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the above and foregoing document has been served on August 25, 2014, to all counsel of record who are deemed to have consented to electronic service via the court's cm/ecf system per local rule cv-5(a)(3).

/s/ Eric H. Findlay
Eric H. Findlay

CERTIFICATE OF CONFERENCE

The undersigned hereby certifies that counsel has complied with the meet and confer requirement of local rule cv-7(h) and that the motion is opposed. Christopher M. Swickhamer, on behalf of counsel for defendants, conferred in good faith with Randall Garteiser, counsel for Blue Spike, LLC by telephone on August 21, 2014. The parties reached an impasse when counsel for Blue Spike, LLC stated that it opposes defendants' motion for leave to exceed page limits, leaving an open issue for the court to resolve.

/s/ Jordan A. Sigale
Jordan A. Sigale